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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1807 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER

Versus

LEGAL HEIRS OF DECD. MUNNA MANUBHAI KOLI

Appearance:

1. First Appeal No. 1807 of 2003

MS RV ACHARYA for Petitioner No. 1-2

MR SANDEEP N BHATT for Respondents

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 21/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

Admit. Mr.Sandip N.Bhatt waives service for the

respondents.

With the consent of learned advocates, this appeal is taken up for final hearing today.

This appeal is directed against the judgment and decree dated 5.4.2003 passed in Special Civil Suit No. 4 of 1995 by the learned Civil Judge, S.D., Morvi directing the appellants to pay Rs 1.5 lacs to the respondents with running interest at the rate of 12% p.a.

The respondents who are the parents of late Munna filed a suit for damages for loss of life of Munna. As averred in the plaint, the deceased child was passing nearby electricity pole on 15.6.1993 and he came in contact with the pole. There was electric leakage in the pole from overhead line of the said pole as a result of which electric current was passing through the said electric pole. As the child Munna came in contact with the said pole, he sustained shock by electrocution and died on the spot.

The respondents who lost their young child aged 11 years, on account of negligence on the part of the appellants, filed a suit for damages and claimed compensation of Rs. 1.5 lacs.

The appellants in their written statement Ex. 10 denied the suit of the plaintiff in toto inter alia contending that the deceased died due to his own negligence and the GEB is not responsible. According to the appellants, during the period of cyclone and heavy rains in the vicinity of Morvi City, the overhead line of electricity pole was broken as a result of which electric current was passing through the pole also. According to the appellants, this is an act of God and hence the appellants are not liable to pay the amount of compensation.

The trial court, after appreciating the evidence on record, held that the plaintiffs have proved that the deceased Munna died due to electric shock on 15.6.1993 due to negligence of the defendants. The trial court, therefore, held that the plaintiffs are entitled to compensation from the defendants of Rs. 1.5 lacs with interest at the rate of 12% p.a.

We have heard Ms.Acharya for the appellants as well as Mr. Sandip N.Bhatt for the respondents.

Even though the learned advocate for the appellants has challenged the findings recorded by the trial court on the question of negligence as well as compensation by contending that there was no negligence

on the part of the appellants and that there was no sufficient evidence for claiming the amount of compensation, from the reasonings given by the learned Trial Judge, we are of the opinion that the learned Judge has considered all the aspects of the matter and has rightly come to the conclusion that the deceased child died due to electric shock due to negligence of the appellants. It is not in dispute that the child died due to electrocution when he came in contact with the pole. It is also not in dispute that there was electric leakage and electric current was passing through the said pole and the child came in contact with the said pole. Considering this aspect, the trial court rightly observed that the poles have been situated in thickly populated and congested area of Sanala road where thousands of people pass everyday and on this main road, if electric current passes through electric poles and the pole snatches any person, then it is nothing but lack of proper care and caution on the part of GEB. Overhead electric wires and poles carrying heavy load of electric energy are highly dangerous and if any human being or animal comes into contact with the same, the consequences are fatal. Since proper care and caution in installing and maintaining overhead wires and poles is not taken, in the instant case,the learned Trial Judge has rightly come to the conclusion that there has been carelessness and negligence on the part of GEB in transmitting electric energy or in maintaining transmission lines. We are in total agreement with the findings recorded by the trial court. We accordingly confirm the findings recorded by the learned Trial Judge, namely that the deceased died due to electric shock on account of negligence of the appellants.

As far as the question of awarding compensation is concerned, the learned Trial Judge, after following the decision of the Apex Court in the case of Haji Zainullahkhan, reported in 1994 ACJ 993, awarded just and proper compensation to be the conventional amount for non earning members of the family like young children and students. The Apex Court, in the case before it, was considering the case of a student of 14 years and had awarded Rs. 1.5 lacs to be the just compensation. Apart from that, Schedule II to the Motor Vehicles Act, 1988 provides that the notional income for the purpose of compensation to those who have no income may be taken to be Rs. 15000/- per annum out of which 1/3rd has to be deducted for the notional personal expenses and thereafter on application of suitable and appropriate multiplier, just and proper compensation can be ascertained. The multiplier for children upto 15 years

of age has been set out to be 15 and applying the same, the compensation in the case of a child upto 15 years will come to Rs.1.5 lacs.Considering this aspect, in our opinion, the trial court was justified in awarding an amount of Rs. 1.5 lacs being the amount of compensation.

Learned advocate for the appellants, however, has challenged the interest awarded at the rate of12% p.a. on the amount of compensation. In the submission of learned advocate, the trial court ought to have awarded interest at the rate of 9% p.a. Our attention is invited to the decision in the case of Kaushnuma Begum and ors. Vs. New India Assurance Co.Ltd., (2001) 2 SCC 9. Mr. Bhatt, learned advocate appearing for the respondents, on the other hand, while supporting the judgment of the trial court, has submitted that the question of interest can be determined in the facts and circumstances of the case. In the submission of learned advocate, the facts and circumstances of the case do not warrant any reduction in the rate of interest.

The Apex Court, in the case of Kaushnuma Begum (supra) has observed : "Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India, the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one year." Considering the said aspect, the Apex Court awarded interest at the rate of 9% p.a. from the date of the claim made by the appellants.

In the later decision in the case of United India Insurance Co.Ltd. Vs. Patricia Jean Mahajan and ors., (2002) 6 SCC 281, the Apex Court, after referring to the case of Kaushnuma Begum has observed that: "In our view, the reason indicated in the case of Kaushnuma Begum is a valid reason and it may be noticed that the rate of interest is already on the decline. We, therefore, reduce the rate of interest to 9% in place of 12% as awarded by the High Court."

In the latest decision in the case of Abati Bezbaruah Vs. Dy.Director General, Geological Survey of India, (2003) 3 SCC 148, the Apex Court, after considering the above two decisions, while considering the question of rate of interest has held that the rate of interest would depend upon the facts and circumstances of each case. In the said decision, the appellant deceased husband aged 48 years met with a fatal accident in 1990 while he was going on his scooter. Considering those facts, the Apex Court awarded interest at the rate

of 9% p.a.

After taking into consideration the above decisions rendered by the Apex Court, we are of the opinion that having regard to the facts and circumstances of the case, the rate of interest be paid at the rate of 9% p.a. which is particularly in view of the fact that the rate of interest is already on the decline. The facts and circumstances of the present case do not warrant the appellants to pay interest at the rate of 12% p.a. on the amount of compensation. In our opinion, the trial court has committed error in awarding interest at the rate of 12%. The appeal, therefore, must succeed on the question of rate of interest.

In the result, the findings recorded by the learned Trial Judge on the question of quantum of compensation are confirmed. We, however, partly allow this appeal by awarding interest at the rate of 9% p.a. to the respondents instead of 12% p.a.as granted by the trial court.

In view of the order passed in the main appeal, Civil Application stands disposed of.

No order as to costs.

(Kshitij R.Vyas,J.)

(M.C.Patel,J.)

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